



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Jackson

Respondent: LSA Montessori Limited

Heard at: Manchester (by CVP)

On: 8 October 2020

Before: Employment Judge Ross

REPRESENTATION:

Claimant: Ms Boase, Claimant's mother

Respondent: Ms Reese, Solicitor

JUDGMENT having been sent to the parties on 20 October 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant brought a claim for unlawful deduction from wages pursuant to section 13 Employment Rights Act 1996 in relation to an alleged deduction from her wages of £660.60, a claim for failure to provide itemised payslips and a failure to provide written particulars of employment.
2. The respondent sought to bring a counterclaim and made an application for costs.
3. The hearing was conducted by remote video link, cloud video platform "CVP". The documents for this case are on the Document Upload Centre (External). I gave oral reasons at the hearing but following a request from the Respondent, I provide these written reasons. I apologise for the delay in producing written reasons which has been due to the pressure of other Judicial casework.
4. I heard evidence from the claimant and from the respondent's witness, Ms Mulela.
5. So far as the claimant's claims were concerned, the claimant confirmed in cross examination that she was entitled to 52 hours' holidays at £8.14 per hour

totalling £526.24 and she also agreed she was owed wages for the relevant period of £4,918. The claimant agreed she should have received statutory sick pay of £474.48. Those figures totalled together, the claimant agreed, was £6,202.40. The claimant agreed she had received £7,003 gross and accordingly there was no underpayment to the claimant. In fact, there was an overpayment. Accordingly, the claimant's claims for unlawful deduction from wages failed.

6. The respondent said in evidence that all the payslips for the claimant were done via the computerised pay system, Sage. It was accepted there was a glitch caused by payroll running incorrectly which caused a "blank" week. I find this was illustrated by the fact the claimant's first payslip dated 11 January should in fact have been dated 18 January. There was therefore a "ghost" payroll run when the error was correct in the week of 11 March. I find this caused considerable confusion to the claimant in understanding the wages she had been paid.

7. The respondent had provided the claimant with itemised pay statements although on some occasions they were not clear. The claimant's claim for a failure to provide itemised payslips failed because payslips had been provided to her.

8. Finally, the claimant's claim for failure to provide written particulars of employment did not succeed because this is a claim which can only succeed if she has a successful claim, but in any event I find that the respondent did provide the claimant with limited written particulars of employment by the time of the hearing just sufficient for the legal requirement.

9. I turn to the respondent's counterclaim. A counterclaim can only proceed in the Employment Tribunal if the claimant has brought a claim for breach of contract under the Employment Tribunals Extension of Jurisdiction Order (England and Wales) 1994, Article 4(d).

10. In this claim I find the claimant brought a claim of unlawful deduction from wages pursuant to s13 Employment Rights Act 1996. She did not bring a claim for breach of contract.

11. So far as the counterclaim is concerned, the claimant did not indicate in her claim form that she was bringing a claim for breach of contract.

12. On 1 October 2019 Employment Judge Hoey asked the claimant whether or not she had raised a breach of contract claim (see document 30).

13. At the case management hearing before Employment Judge Holmes on 9 October 2019 it was noted by Employment Judge Holmes, "It is recorded that there is no breach of contract claim and hence no employer's contract claim".

14. For a valid counterclaim there must be a genuine breach of contract claim. No formal reply to counterclaim has ever been served and no formal Case Management Order has changed the position from Employment Judge Holmes' order that there was no breach of contract claim.

15. Although the claimant said in evidence that she is trying to bring a breach of contract claim, I find the context of her answer suggests she was referring to her claim for failure to provide written particulars of employment. (The claimant did

have a formal written contract or full written particulars of employment.) I have taken into account the claimant is represented by her mother who is not a lawyer.

16. I am satisfied there is no valid breach of contract claim and that there can therefore be no valid counterclaim. I note a valid counterclaim has never been processed.

17. Accordingly, the Tribunal has no jurisdiction to hear the respondent's counterclaim, and that claim failed.

18. Finally, the respondent made an application for costs pursuant to rule 76(1) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the basis that the claim had no reasonable prospect of success and the claimant acted unreasonably in pursuing it.

19. Determining a costs application is a two stage process. Firstly, the Tribunal must be satisfied that the claimant acted unreasonably and/or the claim had no reasonable prospect of success. If the Tribunal is satisfied that the first limb is made out the Tribunal must then turn to the second element, which is the exercise of discretion.

20. By the time of the Tribunal hearing and the respondent had given the explanation for the inaccurate payslips, it was apparent to the Tribunal that the claimant's claim had no reasonable prospect of success. However, the Tribunal is not satisfied that that was apparent to the claimant. The payslips were often confusing and it was only when the respondent's representative took the claimant carefully through the number of hours worked, the hourly rate of pay, the numbers of days' holidays and the amount of statutory sick pay that the total amount became clear.

21. The claimant was represented by her mother, neither of the women were lawyers and in these circumstances the Tribunal is not satisfied that they acted unreasonably in pursuing the claim.

22. However, in case I am wrong about that I turn to the second part of the test, which is the exercise of discretion. The Tribunal reminds itself that costs remain the exception rather than the rule (see **Yerrakalva v Barnsley Metropolitan Borough Council [2012] ICR 420**). The Tribunal reminds itself of the guidance in **Salinas v Bear Stearns International Holdings & Another [2005] ICR 1117**, that there is a high hurdle to be surmounted in ordering costs.

23. The Tribunal reminded itself that Tribunals were established for ordinary people to litigate. The Tribunal has taken into account that the claimant was not professionally represented. The tribunal has taken into account that the payslips issued to the claimant were confusing and the claimant did not understand the amounts she had been paid because due to a technical error, the dates on the payslips were incorrect.

24. For all these reasons, the Tribunal declined to make an order as to costs.

Employment Judge Ross

Date: 26 January 2021

REASONS SENT TO THE PARTIES ON

22 February 2021

FOR THE TRIBUNAL OFFICE

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